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Testimony Before the Subcommittee on Management, Integration and Oversight

Hearing on CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests?

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Good morning Mr. Chairman and distinguished members of the subcommittee. It is an honor and a privilege to appear before you today to present testimony in furtherance of reuniting the enforcement and regulatory functions of what were the U.S. Customs Service and the Immigration and Naturalization Service. The majority of my twenty-five year law enforcement career was spent with the U.S. Customs Service. I held positions in several field offices on both the regulatory and enforcement sides of the Customs Service. I spent the final two years of my career with the Immigration and Customs Enforcement (ICE) before retiring in July 2004. Most of my efforts during the latter years of federal service were focused on rebuilding the Special Agent-in-Charge New York office, which had been destroyed as a result of the terrorist attacks on September 11th, 2001.

For over two centuries, the U.S. Customs Service has facilitated the flow of our nation's commerce while protecting American's business and populous from contraband and more recently terrorist threats. U.S. Customs has always been at the forefront of protecting our nation's borders. A notable example is when a Customs Inspector in Port Angeles, Washington intercepted terrorist Ahmed Ressam who had driven off the ferry from Victoria, B.C., destined for Los Angeles airport with 135 pounds of bomb making ingredients hidden in the trunk of his car. U.S. Customs personnel apprehended him after a foot chase through the streets of Port Angeles almost certainly averting a major disaster. The U.S. Customs Service garnered many similar front page headlines with numerous successful investigations and its many innovative impact programs.

Legacy Customs was comprised of two disciplines, the regulatory side, which included the uniformed inspectional force that the traveling public is familiar with and the investigative function which included the offices of Intelligence, Air and Marine units. The two sides of the agency shared a symbiotic relationship that led to many successful investigations in the enforcement of numerous domestic and international laws. When the Inspectors and the Special Agents were separated into Customs and Border Protection (CBP) and ICE, their collaboration, cooperation and teamwork immediately began to diminish. The current ICE administration paints a favorable picture of the existing situation. It uses superfluous adjective and adverbs along with rhetoric to disguise its current problems. The reality is that ICE statistics are embarrassing compared to those numbers produced before the merger. Since the combining of the two new agencies there has been a sharp decline in the traditional "Customs" related investigations resulting in a drastic reduction in narcotics, illegal merchandise, munitions and currency seizures

It is the belief of many of my colleagues in the Office of Investigations, that the concept of ICE and the subsequent division of the Customs Service was fatally flawed from its inception. Frankly, the creation of ICE was tantamount to building a house without a foundation. Many in the law enforcement community found it quizzical as to why all other agencies that were incorporated into DHS, such as Secret Service, FEMA, Coast Guard, etc. maintained their identity in the transition. The logic behind the concept of ICE became even more arcane when the Federal Protective Service (F.P.S.), an agency responsible for guarding government buildings, was taken from under the General Services Administration and placed within ICE. To date, not a single individual I have spoken with in the federal government can supply any reason for incorporating F.P.S. into this border protection agency. Furthermore, the administration did not conduct a comprehensive review or issue a written report relative to the complexity or feasibility of combining these diverse agencies. Apparently no study, cursory or in depth, was requested or produced in anticipation of the proposed separation. I am certain that if a study had been conducted by an independent group such as the G.A.O., the separation would have never been recommended and consequently not have occurred. Many of my coworkers believed then and continue to feel that the proposed division of Customs and INS was a result of the lack of specific knowledge on the part of those individuals in the administration who proposed it. They certainly had to be unaware of the precise missions of the two agencies. The months following the creation of ICE proved to substantiate that belief. All of our trepidations over the ill conceived creation of ICE quickly began to be realized during the first few months of the new agency's history.

From the onset we were told that ICE was created to protect the nation's borders, foremost against terrorism. We in the New York field office who had witnessed firsthand the death and destruction on September 11th, welcomed the opportunity to contribute to this effort. We were anxious to engage in the fight and looked forward to our role in this important mission. We anticipated ICE's development and communication of our new mission. We awaited a statement that clearly outlined our long and short-term goals. We believed that organizationally, the structure of ICE would be changed to reflect our new mission. We looked forward to the publication of objectives in furtherance of achieving our mission. We believed that the new policies would be distributed to all employees. Two years after the creation of ICE, none of these necessary precursors have been identified let alone accomplished. The best ICE has been able to do thus far is produce a nebulous statement as to what the agency purpose has become. Inexplicably, to date no succinct mission statement has been issued and no specific priorities have been identified.

Customs was always on the cutting edge of computer technology and administrative systems. ICE inherited the INS computer systems that were archaic at best. When we voiced our comments on the need to improve or change these systems to ICE's new management team, we were repeatedly told by ICE management that we didn't understand the new systems. In fact ICE management informed us that they were superior to the Customs systems. Of course the contrary was true, as Congress had repeatedly said in the past, the Immigration systems provided the user with no ability to track the use of funds or to live within their allotted budget. Even today the ICE

administrative systems that track budget, procurement, property, travel and even time and attendance fail to support the efficiencies of the service or promote accountability. This has repeatedly been evidenced by the continuing need to have independent auditors from the private sector review the ICE funding levels and anticipated expenditures. After two years this agency does not have accountability over the funds provided by this Committee. To further exacerbate the situation the agency has failed to identify a clear mission, establish measures of effectiveness and identify the funding level required to pursue its mission. In effect, there is no accountability for the proper expenditure of appropriated funds.

Instead of engaging in the war on terrorism we found ourselves fighting with ICE management to upgrade computer systems and update its programs. We were not requesting anything more than to bring us back to a level of technology that had successfully supported our mission in the past. It became apparent at this point in time that the organization was unable or unwilling to entertain suggestions to improve antiquated technology and flawed policies. Consequently I decide along with many of my contemporaries to retire from the agency, rather than stay and watch helplessly as it deteriorated. This loss of experience and talent has further undermined the agency's ability to succeed. Every current Customs employee I speak with today express their desire to leave ICE, either by retiring when eligible or transferring to another agency. ICE currently has in excess of 800 vacancies which have been caused by the mass exodus and a hiring freeze. If CBP were successful in forming an investigative arm, all of the former Customs Criminal Investigators I have spoken with would readily apply for transfer.

In the interim, morale continues to fall rapidly within ICE. Contributing to this downward trend is the discontinuance of some positive employee initiatives. The Tuition Assistance Program which helps subsidizes education costs, has been ceased. The small monetary recognitions which were distributed to deserving employees in the Customs Service during award ceremonies have disappeared under the new regime. While other divisions within DHS enjoy adequate budgets and recognize their employees for their efforts, ICE employees have difficulty securing sufficient funding to pursue operational objectives and receive no recognition for their often times exemplary performance. The impression, whether true or not, is that the ICE hierarchy has mismanaged the budget. When the ICE hierarchy was informed of the low morale caused by the absence of these programs, they were either non responsive or dismissive of our concerns. From speaking to many people who remain with the agency, ICE continues to flounder.

A merger would reverse this disturbing situation and makes sense on a number of different planes. The over riding reason is an improvement in the efficiencies and effectiveness of government while eliminating duplication of effort. Considerable cost savings of tax dollars could also be realized. Some examples of how a merger will benefit productivity while reducing costs are as follows:

1. It would be beneficial to have one air and marine unit under a single command to support the Immigration/Customs enforcement function.

2. Duplicated intelligence organizations would be melded into a single cohesive unit producing a more efficient and comprehensive intelligence product for the new agency.
3. The separate Internal Affairs units would join together bolstering the efficiency and integrity of the new agency.
4. The forfeiture fund process would be more effective under a single management and result in a more lucrative source that would augment the new agency's budget.
5. Human Resource functions will be integrated into one unit, unifying hiring and recruitment of core area positions.
6. Training staff and regiments would be integrated, resulting in a cost savings and a more effective program.
7. A single Information and Technology division would upgrade all systems databases and make them interoperable creating a more powerful and cost efficient tool.
8. Foreign posts could be filled by one individual representing all Homeland Security interests instead of one for CBP and one for ICE.
9. A single border agency would provide a central point of contact for intelligence and communication on all Immigration and Customs matters with other federal, state and local agencies thus eliminating the current confusion.
10. The business and trade communities would have their issues and concerns better served by the unification of the regulatory and investigative functions.
11. The merger would eliminate the cumbersome necessity of complying with the Third Agency Rule for the exchange of information that is critical to the protection of our borders.
12. The exodus of talent from the agency would stop and the agency would be able to attract highly qualified candidates

I have yet to hear from any individual within DHS articulate a single sound reason for the continued separation of Customs and Border Protection from Immigration and Customs Enforcement. One very vague explanation is that CBP will handle "border enforcement" and ICE will be responsible for "interior enforcement". This reasoning is fatally flawed. "Border enforcement" and "interior enforcement" cannot be separated. This is the same defective logic which created the agency and once again this reasoning displays a complete lack of understanding of the agencies roles and jurisdictional responsibilities. In a similar fashion to CBP, ICE's jurisdictional responsibilities relate to, or must have a nexus to, the border.

ICE's jurisdictional responsibilities directly relate to the cross border movement of people and merchandise. Illegal aliens cross our borders, those involved in immigration fraud cross our borders, narcotics cross our borders, trade mark restricted merchandise

crosses our borders, illicit funds cross our borders, munitions and high technology cross our borders and terrorists cross our borders. ICE is responsible for pursuing criminal investigations in all of these critical areas. However, we have separated the agency responsible for investigating these important violations that undermine our national security from those actually standing on the border. This situation is analogous to separating the uniformed officers from the detectives. A recent decision by CBP to not allow ICE to have immediate access to passenger manifests on aircraft arriving from foreign countries illustrates the types of difficulties encountered as a result of the current structure. Although ICE has a critical need for information on the arrival of foreign passengers to identify criminal violators, smugglers, fugitives and even terrorists, ICE is treated as a "third agency" and must submit a formal written request for the information, a time consuming process that could cost lives

By merging CBP and ICE all of the entities involved in border and immigration enforcement responsibilities will be brought together with a single mission and chain of command. We will not realize the objective of creating a single border enforcement agency until Special Agents, Inspectors, Border Patrol Agents, Intelligence Analyst and Detention and Removal Officers are brought together.

There are a myriad of other reasons why the initial separation of these agencies never made sense and a number of additional justifications as to why combining CBP and ICE is best for this nation and its war on terrorism. I find it hard to believe that anyone can propose a counter argument, with as much cause, to maintain these agencies as separate entities. One thing is certain, whatever the decision of congress is regarding the merging of the two agencies, it should be done quickly. Should we continue with the current configuration it would mean maintaining the duplicity of tasks, wasting tax dollars and perpetuating the downward slide of ICE and its employee's morale. Simply stated, *a house divided against itself cannot stand.*